

CCRB INVESTIGATIVE RECOMMENDATION

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|--|---|---------------------------|---|---|--|
| Investigator: Leanne Fornelli | Team: Squad #8 | CCRB Case #: 201406305 | <input checked="" type="checkbox"/> Force | <input checked="" type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input checked="" type="checkbox"/> O.L. | <input checked="" type="checkbox"/> Injury |
| Incident Date(s) Tuesday, 06/17/2014 6:39 PM | Location of Incident: 28th Ave. at 147th St.; 28th Ave. between 147th and 146th Sts.; § 87(2)(b) | Precinct: 109 | 18 Mo. SOL 12/17/2015 | EO SOL 12/17/2015 | |
| Date/Time CV Reported Wed, 06/18/2014 4:02 AM | CV Reported At: IAB | How CV Reported: Phone | Date/Time Received at CCRB Tue, 06/24/2014 3:44 PM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
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| Witness(es) | Home Address |
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| Subject Officer(s) | Shield | TaxID | Command |
|-----------------------|--------|--------|---------|
| 1. DT3 Michael Avery | 00101 | 936158 | NARCBQN |
| 2. DT3 Thomas Ramirez | 06443 | 939274 | NARCBQN |
| 3. An officer | | | 109 PCT |
| 4. Officers | | | 109 PCT |
| 5. POM Jason Whyte | 29767 | 937733 | 109 PCT |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|----------------------------|-----------|--------|----------|
| 1. DT3 Fang Wang | 03722 | 931399 | NARCBQN |
| 2. SGT Lawrence Fiorello | 01495 | 915719 | NARCBQN |
| 3. POM Michael Callahan | 01788 | 948732 | 109 PCT |
| 4. POM Joan Hidalgo | 12037 | 950587 | 109 PCT |
| 5. POM Christophe Grebosz | 05170 | 948038 | 109 PCT |
| 6. POM Richard Kaercher | 12388 | 941983 | 109 PCT |
| 7. SGT Joseph Fastaia | 02170 | 934841 | 109 PCT |
| 8. POM Jawad Javed | 14164 | 945851 | 109 PCT |
| 9. POM Gregory Aliperti | 21141 | 929605 | 109 PCT |
| 10. LT Mingfang Ho | 00000 | 934798 | 109 PCT |
| 11. POM Dimitrios Sotiriou | 03690 | 949684 | 109 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|----------------------|---|-----------------------------|
| A.DT3 Michael Avery | Discourtesy: On 28th Avenue at 147th Street, Det. Michael Avery spoke discourteously to § 87(2)(b) and § 87(2)(b) | |
| B.DT3 Thomas Ramirez | Discourtesy: On 28th Avenue at 147th Street, Det. Thomas Ramirez spoke discourteously to § 87(2)(b) and § 87(2)(b) | |
| C.DT3 Michael Avery | Abuse: On 28th Avenue at 147th Street, Det. Michael Avery searched the car in which § 87(2)(b) and § 87(2)(b) were occupants. | |
| D.DT3 Thomas Ramirez | Force: On 28th Avenue between 147th Street and 146th Street, Det. Thomas Ramirez used physical force against § 87(2)(b) | |
| E.DT3 Thomas Ramirez | Force: On 28th Avenue at 147th Street, Det. Thomas Ramirez used pepper spray against § 87(2)(b) | |
| F.DT3 Thomas Ramirez | Force: On 28th Avenue at 147th Street, Det. Thomas Ramirez used pepper spray against § 87(2)(b) | |
| G.DT3 Michael Avery | Discourtesy: On 28th Avenue at 147th Street, Det. Michael Avery spoke discourteously to § 87(2)(b) | |
| H.DT3 Thomas Ramirez | Force: On 28th Avenue between 147th Street and 146th Street, Det. Thomas Ramirez used pepper spray against § 87(2)(b) | |
| I.DT3 Thomas Ramirez | Force: On 28th Avenue between 147th Street and 146th Street, Det. Thomas Ramirez used physical force against § 87(2)(b) | |
| J.DT3 Thomas Ramirez | Off. Language: On 28th Avenue between 147th Street and 146th Street, Det. Thomas Ramirez spoke offensively to § 87(2)(b) | |
| K.DT3 Michael Avery | Force: Inside § 87(2)(b) Det. Michael Avery struck § 87(2)(b) with an asp. | |
| L.DT3 Michael Avery | Force: Inside § 87(2)(b) Det. Michael Avery used physical force against § 87(2)(b) | |
| M.DT3 Michael Avery | Force: Outside § 87(2)(b) Det. Michael Avery used a chokehold against § 87(2)(b) | |
| N.DT3 Michael Avery | Force: Outside § 87(2)(b) Det. Michael Avery restricted § 87(2)(b)'s breathing. | |
| O.DT3 Michael Avery | Force: Outside § 87(2)(b) Det. Michael Avery pointed his gun at § 87(2)(b) | |
| P.DT3 Michael Avery | Force: Outside § 87(2)(b) Det. Michael Avery pointed his gun at § 87(2)(b) and § 87(2)(b) | |
| Q.DT3 Michael Avery | Discourtesy: Outside § 87(2)(b) Det. Michael Avery spoke discourteously to § 87(2)(b) | |
| R. Officers | Force: Outside § 87(2)(b) officers used physical force against § 87(2)(b) | |
| S. An officer | Discourtesy: Outside § 87(2)(b) an officer spoke discourteously to § 87(2)(b) | |

| Officer(s) | Allegation | Investigator Recommendation |
|-----------------------|--|-----------------------------|
| T. An officer | Abuse: Outside § 87(2)(b) an officer refused to provide his name and shield number to § 87(2)(b) | |
| § 87(4-b), § 87(2)(g) | | |

Case Summary

On June 17, 2014, at 6:39 p.m., on 28th Avenue at 147th Street in Queens, § 87(2)(b) and § 87(2)(b) his sister § 87(2)(b) and her friends, § 87(2)(b) and § 87(2)(b) were stopped in a car by Det. Michael Avery and Det. Thomas Ramirez of Narcotics Borough Queens. The following was alleged: Det. Avery and Det. Ramirez spoke discourteously to the group (**Allegations A and B**) and searched the car (**Allegation C**). As Det. Avery was apprehending § 87(2)(b) § 87(2)(b) § 87(2)(b) reacted to this and Det. Ramirez punched her in the face (**Allegation D**). § 87(2)(b) § 87(2)(b) began resisting arrest, at which point, Det. Ramirez pepper sprayed him and § 87(2)(b) § 87(2)(b) (**Allegations E and F**). § 87(2)(b) § 87(2)(b) ran away from the officers, headed down the street toward his residence, located about a block away, and Det. Avery ran after him. When § 87(2)(b) ran past a bystander, § 87(2)(b) and § 87(2)(b) did not stop him, Det. Avery spoke discourteously to § 87(2)(b) (**Allegation G**). Det. Ramirez entered his patrol car and followed Det. Avery and § 87(2)(b).

§ 87(2)(b) ran down the street toward her residence. On 28th Avenue between 47th Street and 146th Street, Det. Ramirez returned in his patrol car. He pepper sprayed § 87(2)(b) again (**Allegation H**), used physical force against her (**Allegation I**) and spoke offensively to her (**Allegation J**).

Meanwhile, § 87(2)(b) reached his residence, a two-family house located at § 87(2)(b). He and Det. Avery entered the front door of his landlord. Inside, Det. Avery struck § 87(2)(b) with an asp (**Allegation K**) and used physical force on him (**Allegation L**). When Det. Avery led § 87(2)(b) out of the residence, he placed § 87(2)(b) in a chokehold thereby restricting his breathing (**Allegations M and N**). When § 87(2)(b) s stepfather § 87(2)(b) his mother § 87(2)(b) and his grandmother § 87(2)(b) exited the residence, Det. Avery pointed his gun at § 87(2)(b) (**Allegation O**). Det. Avery then pointed his gun at § 87(2)(b) and § 87(2)(b) (**Allegation P**), and spoke discourteously to § 87(2)(b) (**Allegation Q**).

Backup officers who eventually arrived used physical force against § 87(2)(b) (**Allegation R**) and an officer spoke discourteously to him (**Allegation S**). § 87(2)(b) requested the name and badge number of an officer, who refused to provide this information (**Allegation T**). As a result of the incident, § 87(2)(b) and § 87(2)(b) were arrested. § 87(2)(g)

Mediation, Civil and Criminal Histories

- This case was ineligible for mediation due to the allegation of a chokehold, the arrests resulting from the incident, and the filing of notices of claim (encl. X1-X5).
- On August 6, 2014, § 87(2)(b) and § 87(2)(b) filed notice of claims (encl. X1-X5) with the City of New York, claiming assault, battery, false arrest, false imprisonment, malicious prosecution, improper stop and frisk, excessive use of force, violation of 42 US Code §1983, and other torts, causing permanent personal injuries, and emotional and mental suffering. The amount sought was unspecified.
- Criminal Histories:

- § 87(2)(b)

§ 87(2)(b)

(encl. W1-W7)

○ § 87(2)(b)

○ § 87(2)(b)

(encl. W8-W14)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint involving § 87(2)(b) (encl. C1-C8).
- Det. Avery has been a member of service for 10 years and has had 12 other CCRB allegations in 4 cases (encl. B1-B2) pled against him, none of which were substantiated. In 200705930, a vehicle search (abuse of authority) allegation was pled against him and closed as complainant uncooperative. In 201211440, a discourteous word allegation was pled against him and closed as complainant uncooperative.
- Det. Ramirez has been a member of the service for 9 years and has had 14 other CCRB allegations in 5 cases (encl. B3-B4) pled against him. In CCRB 200612996, an allegation of force (hit against an inanimate object) was substantiated and the Board recommended charges. He pled guilty and the NYPD penalty was the loss of 10 vacation days. In 201011263, a vehicle search (abuse of authority) allegation was pled against him and closed as exonerated. In 201010419, two allegations of physical force and discourtesy (word) were pled against him and both were closed as unsubstantiated. In 201204838, an allegation of discourtesy (word) was pled against him and closed as unsubstantiated.
- PO Whyte has been a member of the service for 10 years and has had 1 other CCRB allegation in 1 case pled against him (encl. B5) which was not substantiated § 87(2)(g)

Additional Witnesses

- Between August 8, 2014, and September 5, 2014, five attempts were made to reach § 87(2)(b) on her home and cellphone numbers. On the first attempt to her cellphone, she answered and said that she could not speak at the time. A voicemail was left for the other attempts to both phone numbers. On August 28, 2014, and September 5, 2014, two please call letters were sent to her and they were not returned by the United States Postal Service (USPS). On April 20, 2015, a search of the online New York City Department of Corrections Inmate Lookup Service (NYC DOC ILS) revealed that she was not incarcerated. To date, she has not contacted the CCRB.
- On August 14, 2014, § 87(2)(b) scheduled her CCRB appointment for August 18, 2014. On this day, § 87(2)(b)'s mother called and cancelled the appointment on her behalf. Between August 18, 2014, and September 10, 2014, five attempts were made to reach § 87(2)(b) by phone and each time, a voicemail was left. On August 28, 2014, she rescheduled her CCRB interview for September 2, 2014. A letter reminding her of this was sent to her and it was not returned by the USPS. She did not appear for this appointment and did not call ahead of time to cancel or reschedule. On September 2, 2014, a missed

appointment letter was sent to her and it was not returned by the USPS. On April 20, 2015, a search of the online NYC DOC ILS revealed that she was not incarcerated. To date, she has not contacted the CCRB.

- § 87(2)(b) stood outside with § 87(2)(b) when the car stop occurred. On September 8, 2014, a LexisNexis search was conducted for § 87(2)(b) that yielded a phone number and an address. Between September 8, 2014, and September 25, 2014, five attempts were made to reach him by phone. Each time, a voicemail was left with the exception of the second time, when the line was busy. On September 8, 2014, and September 22, 2014, two please call letters were sent to him and they were not returned by the USPS. On September 20, 2014, a search of the NYC DOC ILS revealed that he was not incarcerated. To date, he has not contacted the undersigned investigator.
- § 87(2)(b)'s son, § 87(2)(b) witnessed the portion of the incident in front of § 87(2)(b). Between August 8, 2015, and September 10, 2015, five calls were placed to him. The first two times, he asked that the investigator call back because he was unable to schedule his CCRB interview at the time. The last three times, a voicemail was left. On August 28, 2015, he scheduled his CCRB interview for September 5, 2015. On August 28, 2015, a letter was sent to him reminding him of this and it was not returned by the USPS. He did not appear for this appointment and did not call ahead of time to cancel or reschedule. On September 8, 2015, a missed appointment letter was sent to him and it was not returned by the USPS. On April 25, 2015, a search of the NYC DOC ILS revealed that he was not incarcerated. To date, he has not contacted the undersigned investigator.
- On August 15, 2014, fieldwork was conducted to the incident locations and please call letters were distributed to the surrounding residences. To date, no one has contacted the undersigned investigator from these residences.

Investigative Findings and Recommendations

Allegations not Pleaded

- **Vehicle stop:** As § 87(2)(b) acknowledged failing to signal while making a turn, which Det. Avery and Det. Ramirez mentioned as a reason for the vehicle stop, this allegation was not pled.
- **Gun drawn:** This allegation was subsumed into Allegation N which addresses Det. Avery pointing his gun.
- **Discourtesy:** § 87(2)(b) alleged in his initial statement to IAB (encl. E1-E3) that on 28th Avenue at 147th Street, an unspecified officer called him a “smart ass” and inside § 87(2)(b) Det. Avery said to him, “Get on the fucking floor.” As he did not allege this in his verified interview with the CCRB, the allegations were not pled.
- **Discourtesy:** § 87(2)(b) alleged that after Det. Avery drew his gun, he said to § 87(2)(b) “Go back upstairs and mind your fucking business...If I wanted to, I could come inside your fucking house.” As § 87(2)(b) did not allege this, the allegation was not pled.

Explanations of Subject Officer Identities

- As Det. Ramirez and Det. Avery acknowledged their participation in the incident, Allegations A through Q have been pled against them.
- § 87(2)(b) alleged that outside § 87(2)(b) about 25 officers used physical force on him. He could only describe these officers as males. § 87(2)(b) alleged this against approximately 10 officers, who he could only describe as white males.

§ 87(2)(b) alleged this against 7 or 8 officers, who she could not describe. She thought Det. Avery was involved in this, but was not certain. § 87(2)(b) did not allege this. Given that § 87(2)(b) and § 87(2)(b) could not offer substantive descriptions of those that used force against § 87(2)(b) and there were discrepancies in how many officers were involved, these officers could not be identified and photo arrays could not be shown. Thus, Allegation R has been pled against officers.

- § 87(2)(b) alleged that one of the 25 officers who used physical force on him also spoke discourteously to him, but he never saw this officer. No other civilian alleged this. Allegation S has therefore been pled against an officer.
- § 87(2)(b) alleged that an officer who he could only describe as a white male with short brown hair failed to provide his name and badge number upon request. No other civilian alleged this. Given the large number of officers present at the location, this officer could not be identified and a photo array could not be shown. Allegation T has therefore been pled against an officer.
- As PO Whyte acknowledged being on the scene of the incident, § 87(2)(b) has been pled against him.

Allegation A: Discourtesy (Word): On 28th Avenue at 147th Street, Det. Thomas Ramirez spoke discourteously to § 87(2)(b) and § 87(2)(b)

Allegation B: Discourtesy (Word): On 28th Avenue at 147th Street, Det. Michael Avery spoke discourteously to § 87(2)(b) and § 87(2)(b)

§ 87(2)(b) (encl. H1-H10) alleged that when he spoke to Det. Ramirez at the rear of his car, Det. Ramirez said to § 87(2)(b) and § 87(2)(b) “You know what? Girls, get out of the car because the driver wants to be an asshole.” He did not allege this against Det. Avery. § 87(2)(b) (encl. I1-I7) said that after she exited the car with § 87(2)(b) and § 87(2)(b) as they were instructed to do, Det. Avery told them that they were all going to be arrested because of § 87(2)(b) s “asshole brother.” § 87(2)(b) did not allege this against Det. Ramirez. § 87(2)(b) (M1-M5), the independent witness who was outside at the time of the incident and was identified from fieldwork conducted to the location, said that from where he stood, he could not hear any part of the conversation.

Both Det. Ramirez (encl. P1-P10) and Det. Avery (encl. Q1-Q18) denied calling § 87(2)(b) an asshole.

§ 87(2)(g)

Allegation C: Abuse of Authority: On 28th Avenue at 147th Street, Det. Michael Avery searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.

It is undisputed that Det. Avery searched the car and the extent to which he did was corroborated by everyone who was interviewed. § 87(2)(b) (encl. H1-H10) denied that drugs were ever inside the car, which he borrowed from his father.

Det. Avery (encl. Q1-Q18) said that when § 87(2)(b) opened the driver's door to exit, Det. Avery observed, through the open front passenger window, part of a clear sandwich fold-over bag (he originally said it was a Ziploc bag, but then clarified) stuffed into the side compartment of the driver's door. The bag was wedged in place by either a Sucrets container or a pack of cigarettes behind it. Det. Avery had not noticed the bag before and § 87(2)(b) did not reach for it or toward the area in any way. The bag contained a straw sticking up and what appeared to be a wax paper glassine, which commonly contains heroin. Det. Avery could not see heroin or the contents of the glassine, as it was opaque. When § 87(2)(b) stood at the rear of the car with Det. Ramirez, Det. Avery walked to the driver's door, which was still open, looked closely at the object and confirmed it was a heroin glassine. No civilian reacted to this. He did not see a stamp on the object. He knew based on his training and experience that wax paper folded in this way is always a heroin glassine. He did not remove the glassine because he wanted to first ensure that there were no additional drugs or contraband in the car.

Det. Avery asked the females to exit the car and they did so. He entered the driver's door and leaned inside with his knees on the seat and looked around the cabin to ensure there were no additional drugs and to establish that the females had no nexus to the criminality of the heroin glassine. He entered the passenger's side rear door in the same way and looked there. He opened the glove compartment, as it is a common place to hide drugs. He was unsure if there was a center console. He did not find any additional contraband in the car. During this time, the civilians were not speaking, but he did not know if they reacted in any way to the car search.

Det. Ramirez (encl. P1-P10), who approached the driver's side of the vehicle, said that he never saw the drugs that Det. Avery found in the car. He later learned that Det. Avery found the drugs on the driver's side floor.

The Internal Affairs Bureau (IAB) obtained video footage from the residence of § 87(2)(b). This footage (contained in IA 143; encl. Z1) was provided to the CCRB in compliance with a Reznick request and contains the following: At the start of the video, Det. Avery is inside one of the doors on the passenger's side (which one is unclear). Twenty-five seconds later, he closes the door, walks to the open driver's door, and enters. His actions are unclear. Approximately 20 seconds later, he exits the car and walks toward the rear of it.

Det. Fang Wang, who was assigned to the arrests for the incident, generated Evidence Voucher § 87(2)(b) (encl. V25-V26) for one straw with red heroin residue in a Ziploc bag and one heroin glassine with white heroin residue. The criminal court complaint (encl. T23-T29) for which Det. Wang provided testimony (Det. Avery signed this document) states that he was informed by Det. Avery that he observed and recovered a Ziploc bag containing a straw with a quantity of heroin that was next to a glassine envelope, all of which were in plain view on the driver's side door handle of § 87(2)(b)'s vehicle.

As of this writing, the criminal court cases for § 87(2)(b) and § 87(2)(b)'s arrests are open and the next court date is scheduled for § 87(2)(b) (W1-W14).

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Allegation D: Force: On 28th Avenue at 147th Street, Det. Thomas Ramirez used physical force against § 87(2)(b)

It is undisputed that Det. Ramirez used physical force against § 87(2)(b) but the details are in question. § 87(2)(b) (encl. I1-I7) alleged that while § 87(2)(b) was being apprehended, she tapped Det. Ramirez on the shoulder to get his attention because she wanted to know the reason for the arrest. Before she could ask, Det. Ramirez punched her twice consecutively with a closed fist in her jaw. She fell to the ground and held her face while screaming. § 87(2)(b) (encl. H1-H10) corroborated this which he also mentioned in his initial statement to IAB (encl. E1-E3). He said that beforehand, he did not see § 87(2)(b) make physical contact with Det. Ramirez. § 87(2)(b) (encl. M1-M5) said that he saw an officer identified as Det. Ramirez punch § 87(2)(b) in the face, but he could not recall on what side of her face or how many times she was punched. He did not see § 87(2)(b) go after, threaten or make physical contact with Det. Ramirez, but when he discussed the incident with § 87(2)(b) afterward, § 87(2)(b) mentioned that he saw § 87(2)(b) swing at Det. Ramirez.

Det. Ramirez (encl. P1-P10) said that § 87(2)(b) yelled, “Why the fuck are you arresting § 87(2)(b) She then struck Det. Ramirez twice in the shoulder with what felt like her fist (his back was turned toward her). Det. Ramirez instructed her to either “get back” or “get off,” and turned toward her. She yelled, “Don’t fucking arrest him,” and walked quickly toward him from about three to five feet away, as if she was charging him, and pointed at him with a raised hand. Det. Ramirez felt that § 87(2)(b) was going to strike him, so he struck her one time on the right side of her face with an open hand. He did not strike her again in the face and she did not fall to the ground. Det. Avery (encl. Q1-Q18) said that § 87(2)(b) jumped onto Det. Ramirez’s back and wrapped her arms around his face and neck area. He could not recall if anything was said during this time. As Det. Avery struggled with § 87(2)(b) he did not see anything more that occurred between Det. Ramirez and § 87(2)(b) and did not see Det. Ramirez punch her in the face.

§ 87(2)(b) s arrest photograph (encl. I8) and the photographs taken of her by IAB officers at § 87(2)(b) in Queens after the incident show no visible injury to her jaw (encl. I9-I11).

§ 87(2)(b) s medical records from § 87(2)(b) in Queens (see Privileged Information folder) include the following information: She was diagnosed with a contusion of the face/scalp/neck, jaw pain, pain in the temporomandibular joint, an unarmed fight/brawl and an injury or poisoning occurring at/in other specified places. She obtained the jaw pain from the arrest process when she was punched by an officer and she stated that it was difficult to move her jaw. An exam yielded negative results for obvious deformity or swelling, bleeding, soft tissue injury or loose teeth and there was no abrasion or swelling on her face.

Officers may use only the amount of force necessary to overcome resistance, Patrol Guide Procedure (P.G.) 203-11 (encl. A1-A2).

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§ 87(2)(g)

Allegation E: Force: On 28th Avenue at 147th Street, Det. Thomas Ramirez used pepper spray against § 87(2)(b)

It is undisputed that Det. Ramirez used pepper spray against § 87(2)(b) but the details are in question. § 87(2)(b) (encl. H1-H10) said that after he saw Det. Ramirez punch § 87(2)(b) he resisted arrest by pulling his hands away from Det. Avery and pushing himself up from the car. He approached § 87(2)(b) to ensure that she was okay, at which time Det. Ramirez pepper sprayed him. He did not charge or swing at any officer. § 87(2)(b) (encl. I1-I7) said that after she was punched, § 87(2)(b) moved toward her to help her up and Det. Avery was unable to handcuff him because of this. She did not allege that Det. Ramirez pepper sprayed § 87(2)(b) and Det. Avery swung at each other. He later learned that an officer used their pepper spray, but did not see this occur.

Det. Ramirez (encl. P1-P10) said that after he struck § 87(2)(b) in the face, he noticed that § 87(2)(b) was fighting with Det. Avery by swinging at him and Det. Avery was trying to grab him. Det. Ramirez tried to take hold of § 87(2)(b) and he lunged at Det. Ramirez and swung twice at him with a closed fist. Det. Ramirez moved out of the way and then grabbed § 87(2)(b) causing him, Det. Ramirez and Det. Avery to fall to the ground. § 87(2)(b) managed to get the officers off of him, stood on the sidewalk in a fighting stance and said, “You’re not going to arrest me.” Det. Ramirez then pepper sprayed § 87(2)(b)

Det. Avery (encl. Q1-Q18) said that § 87(2)(b) struggled immediately after he grabbed his arms to place him in handcuffs. § 87(2)(b) flexed his arms and stated that he was not going to jail. After § 87(2)(b) jumped on Det. Ramirez, the latter released § 87(2)(b). Det. Avery struggled with § 87(2)(b) and wrestled with him on the ground. § 87(2)(b) managed to free himself from Det. Avery. He stood up and said, “What now, bitches? I’m not going to jail.” Det. Ramirez then pepper sprayed him.

The video obtained from IAB shows that from 00:54 to 1:10, a struggle ensues, but it cannot be seen what initiates this or of what it specifically consists. Det. Ramirez using his pepper spray cannot be seen.

P.G. Procedure 212-95 (A3-A6) permits the use of pepper spray to protect oneself or another from unlawful force, or to establish physical control over a subject resisting arrest or attempting to flee from arrest.

§ 87(2)(g)

§ 87(2)(g)

Allegation F: Force: On 28th Avenue at 147th Street, Det. Thomas Ramirez used pepper spray against § 87(2)(b)

Allegation H: Force: On 28th Avenue between 147th Street and 146th Street, Det. Thomas Ramirez used pepper spray against § 87(2)(b)

Allegation I: Force: On 28th Avenue between 147th Street and 146th Street, Det. Thomas Ramirez used physical force against § 87(2)(b)

It is undisputed that Det. Ramirez used pepper spray against § 87(2)(b) but the details are in dispute. § 87(2)(b) (encl. I1-I7) said that after § 87(2)(b) pulled away from Det. Avery, he moved to help her up from when she fell to the ground after being punched by Det. Ramirez. After a few seconds, she got up by herself and screamed for § 87(2)(b) and § 87(2)(b) to get her mother § 87(2)(b). She did nothing else before Det. Ramirez pepper sprayed her. She could not see what was happening, but heard § 87(2)(b) say that § 87(2)(b) ran to their residence. Det. Avery then ran after him and Det. Ramirez reentered his patrol car. § 87(2)(b) then walked toward her residence. When she was halfway down the block, she stopped because Det. Ramirez sped toward her in the patrol car as if he was about to hit her. Det. Ramirez exited the car and told her to get on the ground and put her hands behind her back, and she complied. Det. Ramirez then stepped on her back and kicked her three times in the stomach, from which she sustained no injury. In her CCRB phone statement (encl. G1-G2), she alleged that Det. Ramirez also kicked her in the face. § 87(2)(b) ran to retrieve § 87(2)(b) but it is unclear when. § 87(2)(b) who was right next to § 87(2)(b) during this time, cried and asked Det. Ramirez to stop. Det. Ramirez handcuffed § 87(2)(b) during which time she was still and did not pull her arms away. She kept calling for § 87(2)(b). After she was handcuffed, Det. Ramirez pulled her head up by the hair and pepper sprayed her for a second time before releasing her head. § 87(2)(b) held onto § 87(2)(b)'s face after this so she would not get pepper sprayed again. A couple minutes later, many uniformed officers arrived and she was eventually placed in a police van.

§ 87(2)(b) (encl. H1-H10) said that after he was pepper sprayed, he saw § 87(2)(b) who was still on the ground after being punched, look up, at which time Det. Ramirez pepper sprayed her. § 87(2)(b) also alleged that Det. Ramirez pepper sprayed § 87(2)(b) in his initial statement to IAB (encl. E1-E3). § 87(2)(b) did not know what to do and was frightened, so he ran down the block toward his residence, located at § 87(2)(b) § 87(2)(b).

§ 87(2)(b) provided a written statement (encl. O1) to IAB officers. She wrote that after § 87(2)(b) struck Det. Ramirez in the shoulder twice, he punched her in the jaw and pepper sprayed her. § 87(2)(b) fell to the ground and after § 87(2)(b) helped her up, she ran to § 87(2)(b)'s residence to retrieve her mother § 87(2)(b).

§ 87(2)(b) (M1-M5) did not see any officer use their pepper spray, but he thought that § 87(2)(b) was pepper sprayed because when she got up from the ground after being punched, she was tearing tremendously.

§ 87(2)(g)

§ 87(2)(g)

Allegation G: Discourtesy: On 28th Avenue at 147th Street, Det. Michael Avery spoke discourteously to § 87(2)(b)

§ 87(2)(b) (M1-M5) alleged that when Det. Avery ran after § 87(2)(b) and they both ran past him, Det. Avery yelled to him, “You’re a fucking asshole. Why don’t you tackle him?” Det. Avery later returned to the scene and apologized to § 87(2)(b) for his earlier comment and said, “It was the heat of the moment. It didn’t mean anything.” § 87(2)(b) who stood with § 87(2)(b) at the time, could not be reached to provide a statement. § 87(2)(b) (encl. H1-H10) did not allege this and he may have been too far down the block to hear any comment Det. Avery may have made to § 87(2)(b).

Det. Avery (encl. Q1-Q18) denied encountering anyone when he ran from the corner. In his CCRB interview, he viewed a photograph of § 87(2)(b) but did not recognize him. He denied making the abovementioned comment to § 87(2)(b) or apologizing at the conclusion of the incident to any bystander for anything.

§ 87(2)(g)

Allegation J: Offensive Language: On 28th Avenue between 147th Street and 146th Street, Det. Thomas Ramirez spoke offensively to § 87(2)(b)

§ 87(2)(b) (encl. I1-I7) alleged that after Det. Ramirez pepper sprayed her for a second time and used physical force against her, he told her that she would never get a good job. § 87(2)(b) who was with § 87(2)(b) could not be reached to provide a statement.

Det. Ramirez (encl. P1-P10) denied making this comment to § 87(2)(b)

§ 87(2)(b)

§ 87(2)(g)

Allegation K: Force: Inside § 87(2)(b) Det. Michael Avery struck § 87(2)(b) with an asp.

§ 87(2)(b) (encl. H1-H10) alleged that when he reached his residence at § 87(2)(b) (encl. D5), he ran up the steps of the stoop and banged on his front door, as his keys were down the block with the car. Det. Avery came up the steps behind him swinging his asp and cornered § 87(2)(b) between his landlord's door, which was ajar and is just to the right to the door to the § 87(2)(b) residence, and the banister. § 87(2)(b) was forced into the apartment of the landlord and PO Avery also entered. Just inside the door, Det. Avery struck § 87(2)(b) in the head at least 30 times with his asp, resulting in bumps everywhere. § 87(2)(b) also made this allegation in his initial statement to IAB (encl. E1-E3).

§ 87(2)(b) (M1-M5) said that when § 87(2)(b) ran from the initial scene of the incident, he observed no injuries on § 87(2)(b) and he ran right in front of him as he passed.

§ 87(2)(b) the mother of § 87(2)(b)'s landlord, was home at § 87(2)(b) with her § 87(2)(b)-old granddaughter. She is a Fujinese speaker and her testimony was translated into English by a professional interpreter from Legal Interpreting Services (encl. N1-N5). She did not know the names of § 87(2)(b) or Det. Avery, but their identities were determined via investigation. At the time of the incident, she heard a loud thump on the door of the residence. When she opened the door, § 87(2)(b) and Det. Avery ran inside at the same time. They went into the living/dining room, located directly next to the front door. § 87(2)(b) was so frightened that she closed her eyes and did not notice if Det. Avery had anything in his hands. When she reopened her eyes, Det. Avery was chasing § 87(2)(b) around the table before he managed to tackle him on the floor in the far corner of the room. Det. Avery placed handcuffs on § 87(2)(b) and hit him once or twice with an asp, but § 87(2)(b) could not recall what happened first or where on § 87(2)(b)'s body he was struck. She was uncertain if § 87(2)(b) swung at Det. Avery. When Det. Avery led § 87(2)(b) out of the residence, § 87(2)(b) noticed that § 87(2)(b) was bleeding a little bit, but she could not recall from where. § 87(2)(b) immediately closed the door. Later, an officer knocked on her door, but she could not speak to him because of the language barrier. A translator was never brought to speak to her.

§ 87(2)(b) (encl. K2-K9) said that when she came outside, § 87(2)(b) was just inside the front door of the landlord's apartment, on the floor in handcuffs, and was with Det. Avery. § 87(2)(b) was bleeding from his head, although she could not tell from where on his head. While Det. Avery brought § 87(2)(b) out of the residence, he repeatedly struck him with an asp in his head, back and perhaps his neck, and she could not estimate how many times.

§ 87(2)(b) (encl. J1-J8) said that when he went outside, he saw Det. Avery and § 87(2)(b) inside the landlord's apartment, just inside the open front door. Det. Avery was atop § 87(2)(b) who was handcuffed and lying face-down on the floor. Det. Avery was striking him numerous times on the back of the head above his ear and on his back with an expandable metal asp. When Det. Avery brought § 87(2)(b) outside, the latter was bleeding from his head and it was running diagonally with sweat across his face, and perhaps from his mouth, but § 87(2)(b) was uncertain about this.

§ 87(2)(b) (encl. L1-L7) said that when she came outside, Det. Avery stood next to § 87(2)(b) on the stoop. § 87(2)(b) was bleeding from the back of his head and the inside of his lip, he had a scrape on his shoulder and his eyes were bloodshot.

Det. Avery (encl. Q1-Q18) said that when he was almost at the residence, he heard § 87(2)(b) yelling for his mother to open the door. Det. Avery pulled out his asp and

instructed § 87(2)(b) multiple times to get on the ground. § 87(2)(b) assumed a fighting stance and said, "I'm not going to jail." Det. Avery ran up the steps, during which time his knee hit the stoop. Det. Avery struck § 87(2)(b) two or three times in his thigh and told him to get onto the ground, but § 87(2)(b) did not comply. He then struck § 87(2)(b) in the shoulder two to four times. A couple seconds later, an individual identified via investigation as § 87(2)(b) opened the rightmost of two doors from the inside. § 87(2)(b) pushed her aside and ran into the residence. Det. Avery was taken aback, and pursued § 87(2)(b) after two to four seconds. Det. Avery struck § 87(2)(b) again with the asp and told him to get down, at which time § 87(2)(b) finally surrendered and lay on the ground. Det. Avery denied striking § 87(2)(b) in the head with the asp. When Det. Avery viewed § 87(2)(b)'s arrest photograph (encl. H11) and IAB Photographs 1 and 2 (encl. H12-H13), he said he did not know how the injury to § 87(2)(b)'s head was sustained and nothing happened during the incident that could have caused this injury.

Det. Avery stated in an AIDED report (encl. Q5-Q10) that he was injured while attempting to place a perpetrator in custody and while on a subsequent foot pursuit, he was assaulted by the defendant. The report states that he suffered torn tendons and ligament in his right knee as well as numerous abrasions to his right hand and left elbow. In his interview, he said that besides banging his knee on the stoop, he thought he may have incurred the other injuries during the struggles with § 87(2)(b) but he did not know for certain.

§ 87(2)(b)'s arrest photographs (encl. H11) and the photographs provided by IAB of him at the hospital show the injuries to his head and body (encl. H12-H24).

§ 87(2)(b)'s medical records from § 87(2)(b) in Queens (see Privileged Information folder) include the following information: The pre-hospital care report summary states that his chief complaint was pain in his head and left wrist. The EMTs noted that he was standing inside a 109th Precinct cell when they found him. He stated that the police beat him up and hit him with a stick several times on his head and body. The EMTs noted a minor, one-inch laceration on the right side of the back of his head that was not bleeding. They noted minor swelling on his left wrist, a minor abrasion on his right shoulder and left knee and no visible deformities. At the hospital, he was diagnosed with an open wound of the scalp, pain in the joint of his forearm, abrasions/friction burns on his torso, hip, thigh, leg and ankle, need for prophylactic vaccination against diphtheria, tetanus and pertussis, assault by striking by blunt/thrown object and an injury or poisoning occurring at/in other specified places. His treatment included five staples to the head and he returned to the hospital a week later for their removal. At the hospital, he complained to medical personnel that he was assaulted with a baton.

The criminal court complaint (encl. T23-T29) for which Det. Wang provided testimony states the following: Det. Wang was informed by Det. Avery that § 87(2)(b) was the landlord and when she opened the front door of the residence, § 87(2)(b) pushed his way in. Det. Avery also told Det. Wang that § 87(2)(b) said she was the legal custodian of the apartment and § 87(2)(b) did not have the permission or authority to enter the premises.

Penal Law § 35.30 (encl. A7-A9) states that an officer may use deadly physical force when the crime committed by the defendant was a felony and in the course of resisting arrest or attempting to escape from custody, the defendant is armed with a firearm or deadly weapon, or when deadly physical force is necessary to defend the officer or another person from what the officer reasonably believes to be the use of the imminent use of deadly physical force. Penal Law § 10.00 (11) (encl. A10-A15) defines deadly physical force as that which under circumstances in which it is used is readily capable of causing death or other serious physical injury. Penal Law § 10.00 (10) (encl. A10-A15) defines serious physical injury as that which creates a substantial risk

of death, or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.

§ 87(2)(g)

[REDACTED]

Allegation L: Force: Inside § 87(2)(b) **Det. Michael Avery used physical force against** § 87(2)(b)

§ 87(2)(b) (encl. H1-H10) alleged that inside the residence, Det. Avery also kicked him 10 to 15 times, which resulted in soreness, but no visible injuries. § 87(2)(b) (encl. N1-N5) could not recall if Det. Avery kicked § 87(2)(b) when they were inside the residence. § 87(2)(b) (encl. K2-K9) and § 87(2)(b) (encl. J1-J8) did not allege this.

Det. Avery (encl. Q1-Q18) denied ever kicking § 87(2)(b)

§ 87(2)(g)

[REDACTED]

Allegation M: Force: Outside § 87(2)(b) **Det. Michael Avery used a chokehold against** § 87(2)(b)

Allegation N: Force: Outside § 87(2)(b) **Det. Michael Avery restricted** § 87(2)(b) **s breathing.**

§ 87(2)(b) (encl. H1-H10) alleged that when Det. Avery led him outside § 87(2)(b) § 87(2)(b) (encl. D5), he held one hand under his handcuffs and the other around the front of his neck. This, compounded with the effects of the pepper spray, restricted § 87(2)(b) s breathing. He complained of this to Det. Avery many times, but he did not respond. When backup arrived ten minute later, Det. Avery dragged § 87(2)(b) down the stairs of the stoop with his arm around his neck before releasing him. This was not mentioned in § 87(2)(b)

§ 87(2)(b) s medical records from § 87(2)(b) in Queens.

§ 87(2)(b) (encl. N1-N5) said that when Det. Avery led § 87(2)(b) out of the residence, she was uncertain if Det. Avery had his arm around his neck and closed the door immediately after they exited.

§ 87(2)(b) (encl. K2-K9) said that Det. Avery dragged § 87(2)(b) out of the landlord's apartment in a chokehold with the inside of one of his elbows on the front of § 87(2)(b)'s neck. She did not think § 87(2)(b) was complaining of restricted breathing and was able to say, "Mom." At one point, Det. Avery threw § 87(2)(b) onto the floor of the steps, but then placed him in a chokehold again in the same manner as before. She did not know for how long § 87(2)(b) was in a chokehold.

§ 87(2)(b) (encl. J1-J8) said when Det. Avery led § 87(2)(b) out of the landlord's residence, he first tried to push § 87(2)(b) down the stairs of the stoop, but § 87(2)(b) jumped in front of him to prevent him from falling down the stairs. In response to § 87(2)(b) Det. Avery pulled § 87(2)(b) toward him again and put him in a kind of headlock, with his right arm around his neck and his left arm behind § 87(2)(b)'s handcuffed arms. § 87(2)(b) was not speaking and his breathing did not appear to be restricted. § 87(2)(b) said that Det. Avery dragged § 87(2)(b) backward down the steps of the stoop, but did not specify whether his arm was still around § 87(2)(b)'s neck.

§ 87(2)(b) (encl. L1-L7) said that four or five minutes after she exited, during which time Det. Avery stood next to § 87(2)(b) on the stoop, Det. Avery said, "Come on," and put the inside of his elbow on the front of § 87(2)(b)'s neck in a chokehold. § 87(2)(b) could not tell if § 87(2)(b)'s breathing was restricted. Det. Avery walked backward down the stairs of the stoop, thereby dragging § 87(2)(b) with him. Det. Avery eventually brought § 87(2)(b) across the street and placed him onto a patrol car.

Det. Avery (encl. Q1-Q18) said that when he brought § 87(2)(b) out of the landlord's residence, he under-hooked § 87(2)(b)'s handcuffs by placing his left arm underneath them and grabbing the top of § 87(2)(b)'s shoulder. Det. Avery grabbed underneath § 87(2)(b)'s armpit with his right and dominant hand. § 87(2)(b) began "playing the game," with Det. Avery and complaining that he could not walk or breathe. Det. Avery did not know why § 87(2)(b) said he could not breathe. He denied ever making contact with § 87(2)(b)'s neck or placing his arm around his neck thereby restricting his breathing. No pressure was ever applied to § 87(2)(b)'s neck and Det. Avery never placed him in a chokehold.

PO Jason Whyte and Sgt. Gina Frabizio were two of the numerous officers who responded to the scene in response to the call for backup. PO Whyte said that when he arrived, two individuals, a young male and a female, were already handcuffed and many officers were already present. He did not see any plainclothes officer with a civilian in a chokehold or with their arm around a civilian's neck. Sgt. Frabizio said that when she was en route to the scene, a call of "no further" came over the radio. She went anyway to sign the memo books of two officers she was supervising. She viewed a photograph of § 87(2)(b) but did not recognize him and saw no force being used on a civilian at the scene.

P.G. Procedure 203-11 (encl. A1-2) forbids the use of chokeholds, which it defines to include but not be limited to any pressure to the throat or windpipe which may prevent or hinder breathing, or reduce air intake.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation O: Abuse of Authority: Outside § 87(2)(b) **Det. Michael Avery pointed his gun at** § 87(2)(b)

Allegation P: Abuse of Authority: Outside § 87(2)(b) **Det. Michael Avery pointed his gun at** § 87(2)(b) **and** § 87(2)(b)

§ 87(2)(b) (encl. H1-H10) said that when Det. Avery was taking him out of the residence, § 87(2)(b) was outside and asked, “What’s going on?” Det. Avery drew his gun, placed it on § 87(2)(b)’s left cheek and said, “Back up. Back up.” After three seconds, Det. Avery pointed the gun at § 87(2)(b) and then waved it around aimlessly. After § 87(2)(b) was taken down the stairs of the stoop, § 87(2)(b) followed by § 87(2)(b) came outside, during which time Det. Avery was still waving his gun around aimlessly. When backup officers arrived after ten minutes, Det. Avery holstered his gun.

§ 87(2)(b) (encl. J1-J8) said that after Det. Avery placed his arm around § 87(2)(b)’s neck, Det. Avery drew his firearm and pointed it at § 87(2)(b) over § 87(2)(b)’s head. Det. Avery then dragged § 87(2)(b) down the stairs of the stoop and for fifteen to twenty minutes, § 87(2)(b) tried to convince Det. Avery to holster his firearm. At one point, § 87(2)(b) told § 87(2)(b) to call 911. During this time, Det. Avery waved his firearm around, at times toward § 87(2)(b) and § 87(2)(b).

§ 87(2)(b) (K2-K9) corroborated § 87(2)(b)’s statement, but said that when Det. Avery first drew his gun, he pointed it at § 87(2)(b) and § 87(2)(b) who were all on the steps. In her interview, she said she did not know if Det. Avery ever touched § 87(2)(b)’s head with the gun. In her phone statement (encl. K1), she said that Det. Avery pointed his gun at § 87(2)(b)’s head. § 87(2)(b) told her to call 911 and she eventually went upstairs to retrieve her phone, but did not do so immediately. Before she did, Det. Avery waved his gun around aimlessly and § 87(2)(b) tried to convince him to holster it. After she came back downstairs from retrieving her phone, more officers had arrived. She did not see when Det. Avery holstered his gun.

§ 87(2)(b) (encl. L1-L7) said that after Det. Avery dragged § 87(2)(b) down the stairs of the stoop, he retrieved what she first thought was pepper spray but later learned it was a gun. During this time, however, § 87(2)(b) thought it was pepper spray and she could not say at whom, if anyone, Det. Avery pointed it. In her CCRB phone statement (encl. G1-G2), she said that Det. Avery drew his gun, held it in the air and then pointed it toward her.

Det. Avery (encl. Q1-Q18) said that when he was on the stoop with § 87(2)(b) individuals identified as § 87(2)(b)

and § 87(2)(b) exited the left door and came onto the stoop. He recognized § 87(2)(b) as having been at the original scene of the incident. At first, Det. Avery did not feel threatened by these individuals, but they kept approaching him to ask what was happening although he told them he would tell them when the situation was sorted out. Det. Avery walked down the stairs backward with § 87(2)(b) and the individuals followed. He instructed them numerous times to stay back, but they yelled comments that included, “What the fuck are you doing?” “Why did you hit my daughter?” and “What are you doing to my son?” Det. Avery backed up all the way to the edge of the curb, but

Allegation S: Discourtesy: Outside § 87(2)(b) **an officer spoke discourteously to**

§ 87(2)(b)

Allegation T: Abuse of Authority: Outside § 87(2)(b) **an officer refused to provide his name and shield number to** § 87(2)(b)

§ 87(2)(b) (encl. H1-H10) alleged that after he was placed inside a patrol car, an officer took him out so that he could get some fresh air. Suddenly, 25 officers came up behind and encircled him. An officer, who he never saw, kicked him in the back of his knees so that he fell onto them. He felt many officers kicking him. An officer said, “Get down on your fucking chest. Get down on your fucking chest.” Before he could comply, he was kicked so that he was face-down on the ground. An officer stepped on his back and he was dragged by the handcuffs. In his initial statement to IAB (encl. E1-E3), he alleged that numerous officers stepped on, kicked and hit him. An officer then picked him up and placed him into a patrol car. § 87(2)(b) asked his officer for his name and badge number, but he did not respond.

§ 87(2)(b) (encl. L1-L7) alleged that she saw § 87(2)(b) on the ground, but did not know how he got there. Many officers, about 7 or 8 although she was uncertain about the number, surrounded him and one of them kicked him. She could not see what else happened to § 87(2)(b) as he was surrounded. She did not allege that any officer spoke discourteously to him or denied a request for a name and badge number.

§ 87(2)(b) (encl. J1-J8) said that § 87(2)(b) was placed on a patrol car. About 20 additional officers arrived to the location and about 10 of them put § 87(2)(b) on the ground, stomped on him, kicked him and beat him up. Nothing prompted the officers’ actions. The officers encircled him, so § 87(2)(b) could not see what else happened to § 87(2)(b). He did not allege that any officer spoke discourteously to him or denied a request for a name and badge number.

§ 87(2)(b) (encl. K2-K9) did not allege this. After § 87(2)(b) was taken to a patrol car, she went to 28th Avenue and 147th Street to find § 87(2)(b).

Det. Avery (encl. Q1-Q18), PO Whyte (encl. R1-R6) and Sgt. Frabizio (encl. S1-S5) denied their involvement in these allegations and denied witnessing them occur.

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

Pod: 8

Investigator: _____

| | Signature | Print | Date |
|-------------|-----------------|-------|-------|
| Supervisor: | _____ | _____ | _____ |
| | Title/Signature | Print | Date |
| Reviewer: | _____ | _____ | _____ |
| | Title/Signature | Print | Date |
| Reviewer: | _____ | _____ | _____ |
| | Title/Signature | Print | Date |